



U.S. Department of Justice

United States Attorney
Southern District of New York

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New York, New York 10007*

February 9, 2024

BY ECF

The Honorable P. Kevin Castel
United States District Judge
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

Re: United States v. Juan Orlando Hernandez, S7 15 Cr. 379 (PKC)

Dear Judge Castel:

The Government respectfully writes, pursuant to the Court's February 8, 2024 order, to provide the Court with additional information regarding its recent productions under Rule 16 of the Federal Rules of Criminal Procedure and 18 U.S.C. § 3500. (*See* Dkt. 695).

First, since filing its January 19, 2024 letter, in which the Government described to the Court several discovery productions that it had recently made, (*see* Dkt. 664), the Government has made four productions consisting of the following materials:

- On January 19, 2024, the Government (i) reproduced four wiretap calls referenced in its January 19, 2024 letter that had already been produced to the defense; (ii) produced a two-page receipt reflecting the transfer of custody for certain ledgers to the Southern District of New York; and (iii) produced nine draft transcriptions/translations, four of which were updated versions of transcriptions/translations previously produced in discovery or as Section 3500 material, and five of which corresponded to the four wiretap calls referenced above.¹
- On January 27, 2024, the Government produced (i) a one-page receipt reflecting the transfer of custody for certain ledgers to the Southern District of New York; and (ii) 29 draft and certified transcriptions/translations of recordings, documents, and other materials, including 14 transcriptions/translations that were updated version of drafts previously produced in discovery and an additional six transcriptions/translations that were certified versions of draft translations produced on the same date.
- On February 6, 2024, the Government produced (i) 21 draft and certified transcriptions/translations of recordings, documents, and other materials, including 12

¹ The transcription/translation for one of the wire calls was divided into two files.

transcriptions/translations that were updated version of drafts previously produced in discovery and an additional two transcriptions/translations that were certified versions of draft translations produced on the same date; and (ii) 30 pages of MLAT returns received from the Honduran government on February 5, 2024, containing line sheets for the four wiretap calls referenced in its January 19, 2024 letter, and a two-page certification of those records.²

- On February 8, 2024, the Government produced (i) a three-page Hague convention certification and a two-page 18 U.S.C. § 3505 foreign business records certification, both related to the MLAT records produced on February 7, 2024; and (ii) seven pages consisting of the unclassified portions of materials previously produced to defense counsel in classified discovery.

Second, since January 19, 2024, the Government also has made five productions of Section 3500 material to the defense, which were identified and prepared as the Government continues to identify additional witnesses that it may seek to call at trial, generates new Section 3500 material based on meetings with potential witnesses to prepare for trial, and reviews its files to ensure that it continues to comply with its disclosure obligations. These five productions are described below:

- On January 22, 2024, the Government produced 46 files. The production included six files consisting of proffer notes and reports that were generated based on meetings with the Government's witnesses after the December 7, 2023 disclosure deadline for Section 3500 materials set by this Court. The production also included (i) 27 files relating to a witness ("Witness-1") for whom, consistent with the Court's prior *ex parte* order, the Government received permission for delayed disclosure of Section 3500 materials; (ii) 10 files relating to an individual whom the Government presently does not intend to call as a witness at trial;³ and (iii) three files that document communications between two witnesses and an agent in this case, including communications occurring after December 7, 2023.
- On January 28, 2024, the Government produced 17 files. The production included 11 files that consist of proffer notes and reports that were created after December 7, 2023. The production also included (i) a paragraph translated from a publication authored by an expert witness for whom the Government provided notice on December 22, 2023; (ii) four files relating to witnesses whom the Government does not presently intend to call at trial; and (iii) one file relating to a domestic violence petition that was filed against one of the Government's witnesses and which the Government had recently obtained.

² In addition to already having produced the wiretap calls themselves, the Government had previously produced a version of these same line sheets in August 2022 that contained summaries of the call as opposed to transcriptions of relevant portions.

³ The Government has advised defense counsel of certain witnesses for whom it produced Section 3500 materials and no longer intends to call as witnesses.

- On February 1, 2024, the Government produced 11 files that consist of proffer notes and reports that were created after December 7, 2023.
- On February 7, 2024, the Government produced 89 files. The production included 26 proffer notes and reports for the Government's witnesses that were created after December 7, 2023. The production also included (i) 58 transcriptions/translations of recordings, messages, and documents that were prepared by the Government's expert linguist and, with one exception, had previously been produced in discovery⁴; (ii) a power point presentation prepared by an expert witness for whom the Government provided expert notice on December 22, 2023; (iii) two photocopies of narcotics ledgers that had previously been produced in discovery; (iv) a report that one of the Government's witnesses had prepared regarding the seizure of evidence in which the witness participated and had recently provided to the Government; and (v) a public charging instrument of an alleged co-conspirator in this case for whom the Government intends to offer co-conspirator statements under Federal Rule of Evidence 801(d)(2)(E).
- On February 9, 2024, the Government produced 17 files. The production included five files consisting of proffer notes and reports that were generated based on meetings held with the Government's witnesses after December 7, 2023. The production also included (i) 11 draft transcriptions/translations of recordings and messages that were previously produced in discovery and (ii) one file relating to a witness for whom the Government intends to offer co-conspirator statements.

Respectfully submitted,

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cc: Defense Counsel (by ECF)

⁴ On December 22, 2023, the Government notified the defense that it would call a federally certified Spanish linguist, and provided supplemental notice on January 24, 2024 identifying the name of that linguist.